

No. 19A_____

IN THE
Supreme Court of the United States

TIMMIE D. COLE, SR., JOSE ADRIAN HERNANDEZ, STEPHON MASON,
ARNULFO TORRES PEREZ & DAVID SAMARRIPA,

Applicants,

v.

J. RAY ORMOND, WARDEN,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI
TO THE SIXTH CIRCUIT**

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May 8, 2019

Counsel for Applicants

APPLICATION

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Sixth Circuit:

Pursuant to Rule 13.5 of the Rules of this Court and 28 U.S.C. § 2101(c), applicants Timmie D. Cole, Sr., Jose Adrian Hernandez, Stephon Mason, Arnulfo Torres Perez, and David Samarripa respectfully request a 60-day extension of time, to and including August 2, 2019, within which to file a petition for a writ of certiorari to review the decision of the Sixth Circuit below.

1. The Sixth Circuit issued its decision on March 4, 2019. *See Samarripa et al. v. Ormond*, Nos. 17-6048, 17-6166, 17-6213, 17-6260, 17-6299, 17-6333 (Appendix A). Unless extended, the time to file a petition for certiorari will expire on June 3, 2019. This application is being filed more than ten days before the petition is currently due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

2. These consolidated cases present an important question of federal law on which the circuit courts are divided: whether the federal in forma pauperis statute, 28 U.S.C. § 1915(a)(1), permits courts to impose a partial filing fee on habeas petitioners who cannot afford the full filing fee. This issue impacts habeas petitioners across the country. If courts are permitted to impose a partial filing fee, it will erect a significant barrier to habeas relief.

3. Applicants are currently incarcerated, and each filed a habeas petition under 28 U.S.C. § 2241 seeking a reduced sentence. Applicants were unsuccessful

in the district court, and they appealed to the Sixth Circuit. Each sought leave in the district court to appeal in forma pauperis without paying the \$505 appellate filing fee. Although the district courts below concluded that applicants could not afford to pay the full filing fee, they nevertheless held that applicants could afford to pay a *partial* filing fee. The district courts imposed a \$50 appellate filing fee on Cole and Samarripa, a \$350 appellate filing fee on Hernandez, and a \$400 appellate filing fee on Mason and Perez.

4. Applicants challenged the district courts' fee decisions in the Sixth Circuit, stating that Section 1915(a)(1) authorizes courts to assess a full filing fee or no filing fee, but does not permit collection of a partial filing fee. Because it is undisputed that applicants cannot afford the full filing fee, applicants argued that they should be permitted to proceed on appeal in forma pauperis and without payment of a filing fee. The U.S. Government supported applicants' position. *See* App. A at 3a.

5. The Sixth Circuit consolidated applicants' cases for argument on the fees issue and appointed an amicus to defend the district courts' fee orders. In the decision below, the Sixth Circuit held that Section 1915(a)(1) authorized the district courts to impose a partial filing fee on applicants. The Sixth Circuit cited the Seventh Circuit's decision in *Longbehn v. United States*, 169 F.3d 1082 (7th Cir. 1999), which had reached the same conclusion. *See id.* at 1083-84. The Sixth Circuit acknowledged, however, that the Fifth Circuit has taken "a different approach" and instead holds that "the district court's choice under § 1915(a)(1) [is] binary: Either grant pauper status and require no prepayment, or deny pauper status and require

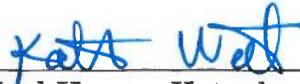
full prepayment.” App. at 8a-9a. This acknowledged split between the Fifth, Sixth, and Seventh Circuits is worthy of the Court’s attention.

6. Following the Sixth Circuit’s decision, Hernandez, Mason, Perez, and Samarripa timely paid the partial appellate filing fee. They seek to recover that fee before this Court. Cole has not paid the \$50 appellate filing fee, and the time has expired to do so. Cole seeks reversal of the Sixth Circuit’s decision upholding the imposition of a partial filing fee as a requirement for his habeas appeal.

7. Applicants request an extension for two reasons. First, applicants have retained Katherine Wellington of Hogan Lovells US LLP, Washington, D.C., to file a petition for a writ of certiorari. Ms. Wellington has experienced significant difficulties contacting applicants, who are incarcerated. In one case, it took almost three weeks of repeated attempts to schedule a single phone call. Ms. Wellington expects that contacting and coordinating with five separate incarcerated prisoners will continue to require additional time. Second, during the next several weeks, Ms. Wellington is occupied with a number of other matters. For example, she is working on the cert-stage reply brief in the capital case *McKinney v. Arizona*, No. 18-1109, due on May 9, 2019. She is also assisting with cert-stage briefing in *Syed v. Maryland*, due on July 18, 2019 (Md. Sept. Term 2018, No. 24). In addition, she has other briefing and hearing dates in the state and federal courts over the next two months, including preparing for a two-day hearing in a multi-district litigation on June 11 and 12 in the District of Kansas (No. 2:17-md-02785). Accordingly, appli-

cants respectfully request that an order be entered extending the time to file a petition for certiorari to and including August 2, 2019.

Respectfully submitted,



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